

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2017-____-E**

IN RE:

Newberry Solar I, LLC,

Complainant,

v.

Duke Energy Carolinas, LLC,

Defendant.

COMPLAINT

INTRODUCTION

The Complainant, Newberry Solar I, LLC, (“Newberry Solar”), acting through its legal Representative, pursuant to R-103-824, of the South Carolina Code of Regulations of the Public Service Commission, and other applicable Statutes and Regulations, complains against Duke Energy Carolinas, LLC, (“DEC”), showing specific violations of Commission Orders, as set forth hereinafter and specific violations of the Public Utility Regulatory Policies Act of 1978 and Implementing Regulations, as set forth herein, with appropriate grounds as follows.

NATURE OF ACTION

This action arises from DEC’s stated refusal to return Newberry Solar to its proper place in DEC’s queue.

COMPLAINANT

Newberry Solar I, LLC.

Newberry Solar I, LLC, (“Newberry Solar”), is an affiliated company of Adger Solar, LLC. Newberry Solar is a Delaware Limited Liability Corporation, duly organized and domesticated to conduct business in the State of South Carolina. Adger Solar, LLC is a utility-scale solar development firm based in Bluffton, South Carolina. Adger Solar has been active in South Carolina since 2014, and currently has over 1,500 MW of solar farms under development in South Carolina. The Adger Solar management team and its investors have led the development of over 9,000 MW of operating utility-scale wind and solar projects in the United States.

DEFENDANT

Duke Energy Carolinas, LLC.

DEC is a South Carolina Corporation, duly organized and conducting business in the State of South Carolina and is a Public Utility subject to the jurisdiction of this Commission.

NOTICE OF DISPUTE

Pursuant to Section 6.2 of the South Carolina Generator Interconnection Procedures for State-Jurisdictional Generator Interconnections (“the Interconnection Standards”), approved by the Public Service Commission of South Carolina, in Docket No. 2015-362-E. Adger Solar, LLC, on behalf of its subsidiary and affiliate, Newberry Solar, tendered a Notice of Dispute to Duke on July 31, 2017. DEC declined to satisfy Newberry Solar’s concerns. Newberry Solar also involved the South Carolina Office of Regulatory Staff, but no accommodation could be reached with DEC.

BACKGROUND

1. The Newberry Solar Interconnection Application was provided to DEC on November 13, 2015.

2. Newberry Solar had several discussions with the DEC's Interconnection staff about the appropriateness of filing its application pursuant to FERC-jurisdictional interconnection procedures or pursuant to South Carolina jurisdiction. DEC advised Newberry Solar that it would have to file under State jurisdiction or Newberry Solar would not be eligible to enter into a power purchase agreement with DEC as a Qualifying Facility ("QF").¹ Because Newberry Solar intended to sell its output as a QF in accordance with DEC's instructions, it submitted its application pursuant to South Carolina jurisdiction.

3. The Interconnection Application was subsequently amended in response to comments from DEC's Interconnection staff on November 16, 2015 and December 30, 2015. Checklist # 11704 was received on **February 8, 2016 with a date in DEC's transmission queue of January 11, 2016**. These changes were of a technical nature and were in response to requests from DEC related to the assumptions Newberry Solar used for impedances and reactive power calculations.

4. DEC held a scoping call with Newberry Solar in late February 2016. On that call, Newberry Solar asked DEC for confirmation that there were no projects ahead of Newberry Solar in the queue. Representatives of DEC stated that there were no projects ahead of Newberry Solar in the queue, and in fact Newberry Solar was the first large solar project in the queue in DEC's entire South Carolina territory.

Despite the fact that Newberry Solar's Interconnection Application was completed by early February 2016, DEC did not provide a System Impact Study Agreement ("SIS Agreement") to Newberry Solar until **January 13, 2017**. The SIS Agreement was executed on February 6, 2017.

¹ A "Qualifying Facility" is a cogeneration or small power production facility that qualifies under the provisions specified in Part II of the Federal Power Act, 16 U.S.C. § 824a-3 ("PURPA"), as well as the implementing regulations adopted by the Federal Energy Regulatory Commission, as set forth in 18 C.F.R. Section 292.

5. On, March 20, 2017, DEC notified Newberry Solar of two issues:

- a. The rating on the transmission lines that Newberry Solar planned to interconnect to was lower than originally thought. As a result, each of the two lines could only accommodate a maximum of approximately 53 MW each², or 106 MW total, before upgrades would be required; and
- b. DEC had already completed a system impact study for a 88 MW project that plans to interconnect 44 MW to each of same two transmission lines,³ which resulted in only approximately 18 MW of available capacity remaining on the lines that could be utilized by Newberry Solar prior to requiring what would likely be expensive and time-consuming upgrades. DEC indicated that the costs of these upgrades had not been calculated yet but could be in the range of \$10-20 million, or possibly higher.

6. DEC also agreed to perform the SIS assuming two scenarios – one with the 88 MW ahead of Newberry Solar, and a second with the 88 MW project behind Newberry Solar.

7. After a number of exchanges with DEC during March and April 2017, it was determined that the 88 MW project had submitted an application pursuant to the FERC Interconnection process and had received its queue number on April 20, 2016 – **two months after Newberry Solar received confirmation from DEC that its interconnection application was complete.**

8. During these exchanges, DEC explained to Newberry Solar that it is operating separate interconnection queues for state jurisdictional projects and FERC jurisdictional projects, and moreover, DEC has not reconciled or used consistent queue priority standards between these two queues. In particular, it became apparent to Newberry Solar that DEC has utilized a queue priority date for projects in its FERC queue based on the date it receives a valid interconnection request, while for projects in its state-jurisdictional interconnection queue such as Newberry, DEC states that it considers the project's queue priority to be based on the date that its system impact study agreement is executed.

² This estimated injection capacity was provided by DEC to Newberry Solar.

³ Newberry Solar believes that this project was listed in DEC's FERC interconnection queue as project number 42544.

9. Prior to these exchanges, DEC never informed Newberry Solar that its queue priority would not be established based on the date of its completed interconnection application, or that it would be based on the date of execution of the system impact study agreement, or that its queue position would have no bearing with respect to projects being studied in the FERC-jurisdictional queue.

10. By failing to reconcile the queue priorities between its state and federal jurisdictional interconnection queues, DEC is giving priority to projects that enter the FERC queue at the expense of those enter the state queue, such as the Newberry Solar project. This is aptly demonstrated by Newberry's situation, in which DEC has allowed a project that entered its FERC queue more than four months after Newberry submitted its completed interconnection application to "jump the line" in front of Newberry.⁴ The effect of this is to give this later-applying projects priority rights in obtaining the benefit of any existing system capacity and thereby lowering their interconnection costs at the expense of what should be earlier-queued projects. DEC has provided no reasonable explanation for why such discrimination against qualifying facilities in favor of projects that elect to interconnect pursuant to FERC jurisdictional interconnection standards is necessary or warranted.

11. Upon information and belief, both South Carolina Electric & Gas and Duke Energy Progress are and have been reconciling their FERC and State jurisdictional queues by using a consistent queue priority standard based on the date of submission of a completed interconnection application. DEC's insistence on not reconciling the two queues favors FERC jurisdictional interconnections, because it is believed that there are fewer applications in the FERC queue.

12. The costly upgrades that will likely be required in order to accommodate the interconnection of Newberry Solar based on the erroneous queue position assigned by DEC combined with DEC's failure to harmonize its FERC and state interconnection queues is likely to undermine the ability of the Newberry Solar project to obtain financing, and therefore, threatens the commercial viability of the project.

⁴ Upon information and belief, the 88 MW project is no longer listed in DEC's FERC-jurisdictional interconnection queue and appears to have transitioned into DEC's state queue.

COMPLAINT

1. Complainant is a solar photovoltaic generating facility located in Newberry County, South Carolina.

Violations of Previous Commission Orders.

2. DEC is under specific order from this Commission to negotiate in good-faith in its purchase of electrical energy. See, on page 26 of Commission Order No. 85-347, dated August 2, 1985, Docket No. 80-251-E.

3. Further this Commission has encouraged that, in circumstances where agreement cannot be reached, the aggrieved party present the issue for resolution before this Commission, by way of a formal Complaint. See, page 28 of Commission Order 85-347, dated August 2, 1985, Docket No. 80-251-E. It is understood that the Orders of this Commission continue in force, until further order of this Commission.

4. Based on the facts set forth hereinabove, DEC has not acted in good-faith in its negotiations with Newberry Solar, as is required by this Commission.

5. DEC's actions also violate this Commission's Interconnection Standards. Section 1.3.2 of the Interconnection Standards specifically states that "[t]he original date- and time-stamp applied to the Interconnection Request Application Form shall be accepted as the qualifying date- and time-stamp for the purposes of establishing Queue Position and any timetable in these procedures." Moreover, Section 1.6 makes clear that this Queue Position "shall be used to determine the cost responsibility for the Upgrades necessary to accommodate the interconnection." As such, DEC is required to establish Newberry Solar's Queue Position as of no later than January 11, 2016.

6. Section 4.2.3 of the Interconnection Standards also require that DEC provide interconnection customers such as Newberry Solar with a System Impact Study agreement "no later than ten (10) Business Days after the scoping meeting." DEC did not provide Newberry Solar with a System Impact Study agreement until approximately **250 days** after the scoping meeting.

7. Although the Newberry Solar interconnection application was completed in February 2016, shortly before the effective date of the Interconnection Standards, the Interconnection Standards still govern DEC's processing of Newberry Solar's request. The Interconnection Standards do not contain any language that suggests that they would not apply to Newberry Solar's application. To the contrary, Section 1.1.3 defines the scope of applicability of the Interconnection Standards, indicating that they do not apply to "Generating Facilities interconnected prior to the effective date of these procedures." Newberry Solar has not been interconnected at all, much less prior to the effective date of the Interconnection Standards.

8. Moreover, Section 1.7 of the Interconnection Standards specifically addresses interconnection requests submitted and interconnection agreements executed prior to the effective date. Section 1.7 indicates that "[n]othing in this Standard affects an Interconnection Customer's Queue Position assigned before the effective date of this Standard." It also provides that a utility "shall complete work pursuant to any interconnection study agreement executed prior [to] the effective date of this Standard" As of the effective date of the Interconnection Standards, DEC had not assigned a queue position to Newberry Solar, nor had DEC even tendered an interconnection study agreement. As such, this provision in no way exempts or carves out Newberry's interconnection request from application of the Interconnection Standards. The Interconnection Standards, including the queue priority provisions, fully apply to Newberry Solar.

Violation of the Public Utility Regulatory Policies Act of 1978 and Implementing Regulations.

9. Regardless of whether the Interconnection Standards apply to DEC's processing of Newberry Solar's interconnection request, DEC's actions in failing to establish consistent queue priority standards and failing to reconcile the queue priority dates between its state and federal queues would, if left unremedied by this Commission, constitute a violation of the Public Utility Regulatory Policies Act ("PURPA") and FERC's implementing regulations.

10. Section 210 of PURPA requires FERC to prescribe rules “necessary to encourage cogeneration and small power production,” including rules requiring that utilities offer to purchase the output of small power production facilities at rates that do not “discriminate against qualifying cogenerators or qualifying small power producers.”⁵ FERC’s rules implementing the requirements of Section 210 are set forth in 18 C.F.R. Section 292. Section 292.203 requires electric utilities such as DEC to “make such interconnection with any qualifying facility as may be necessary to accomplish purchases or sales under this subpart.” Section 292.306 specifies that each qualifying facility is obligated to pay the interconnection costs which the State regulatory authority “may assess against the qualifying facility *on a nondiscriminatory basis* with respect to other customers with similar load characteristics.” (Emphasis added).

11. Section 210(f) of PURPA provides that state regulatory authorities shall, after notice and opportunity for public hearing, implement any rule promulgated by FERC under Section 210.⁶ As such, this Commission has the authority and obligation to implement and enforce the interconnection requirements set forth in Section 292 of FERC’s regulations, including the requirement that any interconnection costs assigned to a qualifying facility such as Newberry Solar be assessed on a non-discriminatory basis.

12. DEC’s failure to reconcile the queue positions of projects in its state and FERC-jurisdictional interconnection queues has and will continue to result in the assessment of interconnection costs that discriminate against qualifying facilities. This is aptly demonstrated by Newberry Solar’s situation. Approximately four months after Newberry Solar submitted its interconnection application, another project submitted a request to interconnect to the same transmission line in DEC’s FERC-jurisdictional interconnection queue. Despite the fact that Newberry submitted its application well in advance of this other project, DEC has treated the other project as “first in line,” thereby providing this other project with a priority right to utilize the existing capacity of DEC’s system. As described above, this will have the effect of substantially and unfairly increasing Newberry Solar’s interconnection costs and creating delays for Newberry Solar in the interconnection study process.

⁵ 16 U.S.C. § 824a-3(b).

⁶ 16 U.S.C. § 824a-3(f).

13. DEC has failed to articulate any reasonable basis for discriminating against Newberry Solar and other projects utilizing state-jurisdictional interconnection procedures in favor of projects that elect to pursue interconnection under the FERC procedures. In discussions with DEC, the only explanations it offered as to why it provided a priority right to utilize existing system capacity to projects in its FERC queue was an assertion that there are differences in the study procedures between the two queues and the fact that there are more projects in the state queue.

14. These explanations are unavailing. First, neither rationale offered by DEC explains why DEC could not establish Newberry Solar's queue position based on the date of its completed interconnection application. Newberry Solar is unaware of any applicable interconnection procedures that provide for a queue position based on the date of the execution of the system impact study. As stated above, South Carolina's Interconnection Standards specify that queue position will be established based on the date of an accepted interconnection application. This is also the case in both FERC's standard large generator and small generator interconnection procedures.⁷ And it is also true of this Commission's interconnection procedures in effect prior to the most recently adopted procedures.⁸ Newberry Solar therefore had no reason to expect that it would receive a queue position based on anything other than the date of its completed interconnection application.

15. With respect to purported differences in study procedures, it is unclear as to why there would be significant differences in study procedures between DEC's state and FERC-jurisdictional interconnection queues, particularly with respect to projects of similar capacity and which plan to interconnect to facilities with similar voltage levels (such as the Newberry Solar project and the FERC queue project that DEC prioritized ahead of it). But even if there are reasonable differences in study procedures, those differences do not present a compelling

⁷ See FERC pro forma LGIP, Section 4.1 ("Transmission Provider shall assign a Queue Position based upon the date and time of receipt of the valid Interconnection Request"); FERC pro forma SGIP, Section 1.6 ("The Transmission Provider shall assign a Queue Position based upon the date- and timestamp of the Interconnection Request.").

⁸ See Standard for Interconnecting Small Generation 100 kW or Less with Electric Power Systems (EPS) (Interconnection Standard), Section 8.2 ("The Company considers the application based on the date a completed application is received by the Company in reference to priority when evaluating the Area EPS screen limit."). Although these procedures only directly applied to facilities 100kW or smaller, they are still instructive insofar as there were no other established interconnection procedures that applied to QFs in South Carolina at the time.

rationale for providing FERC-jurisdictional projects with a priority over state-queued projects in terms of assigning cost responsibility for upgrades.⁹ As indicated above, it is Newberry's understanding that the other two major South Carolina utilities under the Public Service Commission's jurisdiction, DEP and SCE&G both reconcile the queue position of all interconnection requests regardless of whether they are proceeding under FERC or state-jurisdictional interconnection procedures. Indeed, FERC addressed this precise point in its Order No. 2006,¹⁰ in which it adopted distinct interconnection procedures for small generators (i.e. generators 20 MW or less). In that proceeding, certain parties argued that FERC should adopt separate queues for small and large generators, arguing that failing to do so would lead to delays for small projects as a result of higher-queued large projects that require more extensive studies. FERC declined to do so, explaining that "[a]lthough Queue Position determines the order of the interconnection studies and the cost responsibility for the Network Upgrades necessary to accommodate the interconnection, it does not determine the order in which the interconnections are completed."¹¹ As such, even if there are reasonable differences in DEC's study procedures between projects in its state and federal-jurisdictional queues, there is no reason those differences should affect the order in which interconnections are prioritized for purposes of assigning upgrade costs.

16. For the same reasons, the fact that there are more projects in DEC's state queue relative to its FERC queue is not a compelling reason for prioritizing projects in the later queue ahead of those in the former for purposes of assigning upgrade costs.

17. DEC's practice of prioritizing interconnection requests in its FERC-jurisdictional queue discriminates against qualifying facilities that utilize state-established interconnection procedures. Such discrimination is prohibited pursuant to Section 292.306 of FERC's regulations, and this Commission has the authority and obligation to remedy such discrimination pursuant to PURPA Sections 210(f) and (g).

⁹ This explanation is also perplexing insofar as if there were differences in study procedures based solely on which queue a project was placed in, it would seem that the procedures for state-jurisdictional projects would be more streamlined than those for projects in the FERC-jurisdictional queue, as projects in the former will generally be smaller than those in the later.

¹⁰ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (2006) ("Order No. 2006").

¹¹ Order No. 2006 at P. 178.

18. Complainant is represented by counsel in this proceeding:

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CONCLUSION

Based on the foregoing, this Commission should order Duke to act in good-faith consistent with the previous Orders of this Commission, and the Public Utility Regulatory Policies Act and restore Newberry Solar to its proper place in DEC's queue relative to other projects based on the dates that the interconnection applications were received by DEC, regardless of whether the applications were submitted under South Carolina jurisdictional interconnection procedures or FERC-jurisdictional procedures.

WHEREFORE, Complainant prays for the following relief:

- a.** Restore Newberry Solar to its proper place in DEC's queue; and
- b.** FOR SUCH OTHER AND FURTHER RELIEF AS IS JUST AND PROPER.

[Signature Page Follows]

Respectfully Submitted,
/s/

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